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Federal Communications Commission
Office of the Secretary

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June 25, 1992

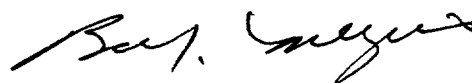
Ms. Donna Searcy
Secretary,
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: CC Docket No. 92-90
Proposed Rule to Implement
the Telephone Consumers Protection Act of 1991

Dear Ms. Searcy:

Attached are one original and nine copies of the Reply Comment submitted on behalf of the American Collectors Association to be formally filed in reference to the matter captioned above.

Sincerely,



Basil J. Mezines

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

Federal Communications Commission
Office of the Secretary

In the Matter of

**The Telephone Consumer Protection
Act of 1991**

CC Docket No. 92-90

REPLY COMMENT OF THE AMERICAN COLLECTORS ASSOCIATION

AMERICAN COLLECTORS ASSOCIATION
Basil J. Mezines, General Counsel
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Reply Comment of the American Collectors Association

The American Collectors Association ("ACA") takes note of the large volume of comments on the record of this rulemaking process. With the exception of Consumer Action, to which ACA responds *infra*, those who have commented for the record on the issue of exemption for debt collection from the auto-dialing ban have endorsed the analysis offered by the FCC in the notice of proposed rulemaking (NPRM). There is a strong consensus among the commenting parties that the FCC is correct to exclude debt collection from the auto-dialing ban.¹ There is some difference among the parties as to the grounds for the exemption of debt collection. ACA repeats

¹ *E.g.*, Comments by Citicorp at 9; the American Financial Services Association at 5; Ohio Student Loan Commission; Coalition of Higher Education Assistance Organizations; Student Loan Marketing Association at 7,10; Wells Fargo Bank; Consumer Bankers Association at 2; Ameritech Operating Companies at 6; Household International at 5.

its understanding that the exclusion of debt collection from the prohibitions under § 227(b) is due both to the fact that such calls are not solicitations and to the fact that a debt establishes an existing business relationship.

Household International endorsed the analysis in the NPRM but urged the Commission to adopt the position that the establishment of the debt itself constitutes consent to future communications regarding collection. Household International at 5.

ACA endorses Household's analysis on this point and asks the Commission to provide guidance on the issue of consent. If the Commission does not accept Household's analysis, then it should at least provide guidance as to the form this consent should take at the time of the issuance of credit so as to satisfy the requirements of § 227(b).

ACA's Response to Consumer Action

The only express disagreement on this point on the record comes from the comments submitted by Consumer Action. ACA now replies.

Consumer Action ("CA") asserts that there should be no exemption for debt collectors for three reasons. The first is that "improper debt collection practices are a

major source of consumer complaints" and that the use of auto dialers for debt collection "will lead to violations of federal debt collection law and regulations."²

Even overlooking the conclusory nature of this assertion, there is no basis for the claim that the NPRM will lift or lessen the requirements of the Fair Debt Collection Practices Act. The degree of automation employed in debt collection calls does not affect the scope or applicability of the FDCPA. Under current law, tens of thousands of debt collection calls are lawfully made every day by automated dialing systems. There is no reason offered to CA to indicate that the NPRM would increase the volume of such calls or the frequency of practices rendered illegal under the FDCPA.

CA's argument is also hampered by a persistent confusion of auto dialers with fully automated message delivery systems. The use of an auto-dialer for the purpose of placing a live call does not involve the kinds of disclosure problems CA outlines in its comment.

The second argument offered by CA is that the

"use of auto dialers to place debt collection calls would be a violation of the Fair Debt Collection Practices Act, because it would allow, promote and facilitate the communication of the alleged debt to third parties, namely, anyone

² Comment of Consumer Action at 7.

who happened to answer the phone (including minor children and other immediate family members, visiting friends, relatives, maids, repairpeople, salespeople, etc.).³

ACA and others have noted a possible conflict between the FDCPA and the NPRM with respect to the caller self-identification required in the taped preliminary components of live, autodialed communications.

CA, however, bases its concerns on a failure to distinguish auto dialing and automated voice systems. The situation sketched by CA assumes that as soon as the receiver is picked up a torrent of debt-related information will automatically be delivered to the listener. The FDCPA prevents that from being current practice in the collections industry and there is nothing in the proposed rule that would make debt collection callers more inclined to violate the FDCPA.

The third CA argument against an exemption for debt collection calls is that such calls are "clearly commercial calls that adversely affect the privacy rights of the people called...[such] calls are by their very nature intrusive and involve an invasion of privacy of the party called" and that the prior business relationship is "irrelevant."

³ Id.

CA confuses "commercial" calls with "telephone solicitations." Congress' intent to make careful distinctions in this respect is reflected in the language of section 277(a)(3) of the Act:

"The term 'telephone solicitation' means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that person's prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax exempt nonprofit organization.

A debt collection call is clearly not an attempt to encourage the purchase of products or services. Merely calling such calls "commercial" does not change their status under the Act.

CA concludes this third argument by asserting that the existence of an unpaid debt should be regarded as a unilateral termination of a business relationship. Under CA's analysis, a consumer who no longer wishes to pay a debt, by definition, has discontinued the relationship with his creditor. Therefore, any further communication from the creditor is invasive. ("Receiving calls from a party you do not wish to do business with, by definition, is an invasion of privacy." *Id.* at 8.)⁴

⁴ ACA doubts that CA would accept the logical corollary of this analysis, namely that a business which chooses not to provide the products or services it owes to its customers has thus

ACA finds this analysis highly unpersuasive. A business relationship exists so long as the debt remains unpaid. The consumer may challenge the validity of a debt. The consumer may not wish to transact any additional business with a particular creditor in the future. However, his present business relationship is not concluded while existing valid debts remain unpaid. There is no basis in law for assuming that a mere refusal to pay a debt limits in any way the rights of the debtor. A definition of "business relationship" which does not reflect business and legal realities would be unworkable.

Proposed Rules and the Fair Debt Collection Practices Act

Several comments expressed the same concerns offered by ACA as to a possible conflict between the NPRM and the Fair Debt Collection Practices Act with respect to the caller self-identification requirement.⁵

The National Consumers League ("NCL") asserts that these concerns are unwarranted:

terminated the business relationship and thus should not be required to accept "intrusive" calls from aggrieved customers.

⁵ *E.g.*, Comment of Digital Systems International, Inc. at 8.; J.C. Penney Company, Inc. at 12; Consumers Banking Association at 5; American Bankers Association at 4.

It appears that this concern may be unwarranted, since the exemption specifically applies to instances where debt collectors contact third parties in an attempt to locate a person in connection with the collection of a debt.

Comment of the National Consumers League at 11.

This analysis misses the point of the concerns expressed by ACA and others. It is the possibility of inadvertent disclosures during an attempt to contact the debtor himself that is the primary basis of such concerns. A recorded self-identification message received by a family member or house guest of the debtor could be considered a disclosure violative of the FDCPA.

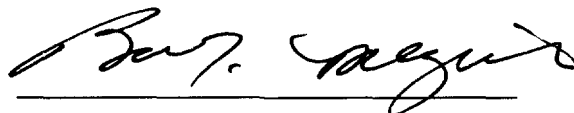
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Respectfully submitted,



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